PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION **RESOLUTION E-3835**
October 16, 2003

R E S O L U T I O N

Resolution E-3835. Southern California Edison (SCE) requests Commission approval of revisions to tariff schedules necessary to extend the TOU pricing requirement mandated by AB1X 29 and D.01-05-064 to all customers with demand exceeding 200 kW.

By Advice Letter (AL) 1649-E filed on September 6, 2002.

SUMMARY

This Resolution denies SCE's request to revise its tariffs as requested in AL 1649-E. This resolution directs SCE to seek approval of its proposed tariffs in the Commission's rulemaking on demand response (R.02-06-001).

The protest by UC / CSU / TIC is granted and the protest by EMS is denied.

BACKGROUND

On September 6, 2002, SCE filed AL 1649-E for the purpose of requiring that all customers with peak demands exceeding 200 kW should have a real-time or interval meter installed and be required to take service on a TOU rate schedule.

In April 2001, Governor Gray Davis signed into law AB1X 29 (Statutes of 2001) one of three urgency bills enacted by the Governor to respond to the state's energy crisis. AB1X 29 allocated $35 million from the state General Fund for the California Energy Commission (CEC) to provide either time-of-use (TOU) or real-time interval meters to customers with demands greater than 200 kW.

As part of the Commission's effort to address real-time pricing issues, D.01-08-021 found that the receipt of TOU or RTP meters for customers with electric loads over 200 kW of peak demand is mandatory under AB1X 29. It further found that the CEC has chosen to use the $35 million allocated by the Legislature under AB1X 29 to install RTP metering systems for customers. D.01-09-062 found that customers receiving RTP meters under AB1X 29 who are not on a TOU schedule should be placed on a TOU schedule.

Through AL 1549-E-A (approved by the Commission through Resolution E-3746), SCE established the Real-Time Energy Meter (RTEM) Memorandum Account for the purpose of recovering costs that are in excess of funds provided by the CEC through AB1X 29. Specifically, SCE anticipated receiving up to $19 million from the CEC (through AB1X 29 and SBX1 5 appropriations) to install interval meters and related infrastructure for 12,000 customers with demand of 200 kW or greater. However SCE also estimated that an additional $20 million would be needed to install and operate the metering and communication infrastructure necessary to make the metering system operational. SCE would seek recovery of the incremental costs at a later date, presumably through its next General Rate Case.

SCE has continued to install interval meters beyond the 12,000-customer target funded by AB1X 29. These are either new customers requesting service in SCE territory (and are greater than 200 kW), or existing customers whose growth in energy demand has taken them above the 200 kW threshold. All of these ‘post-AB1X 29’ customers may have been placed on TOU rates as well. SCE estimates that it has currently installed interval meters at 12,700 accounts and the operating and maintenance costs of the installations have been booked to the RTEM Memorandum Account or a recently approved GRC memorandum account depending upon the time of the installation.[1] The capital expenditures for the RTEMs in excess of 12,000 have not been booked to the RTEM memo account but are funded in the same manner as SCE's regular meter purchases.[2]

In AL 1649-E, SCE states that its tariffs currently require only those customers that have received an AB1X 29-funded meter to take service on a TOU rate schedule. The tariffs do not require customers who receive a ratepayer-funded interval meter or other type of interval meter to take service on a TOU rate schedule. SCE further states that to ensure equity among SCE’s customers and consistency with the intent of AB1X 29 and D.01-08-021, SCE proposes to revise

[1] Energy Division phone conversation with SCE representatives on September 9, 2003.

[2] Email from SCE to Energy Division data request received on September 24, 2003.

its tariffs by removing references to state-funded meters and clarify that all customers with peak demand exceeding 200 kW should have a real-time or other type of interval meter installed and be required to take service on a TOU rate schedule.[3]

NOTICE

Notice of AL 1649-E was made by publication in the Commission's Daily Calendar. SCE states that a copy of the AL was mailed and distributed in accordance with Section III-G of General Order 96-A.

PROTESTS

Grueneich Resource Advocates (Grueneich) and Energy Management Systems (EMS) timely protested AL 1649-E on September 26, 2002. Grueneich protested on behalf of the University of California, California State University and The Irvine Company (UC/CSU/TIC).

SCE responded to both protests on October 3, 2002.

The following is a more detailed summary of the major issues raised in the protests.

DISCUSSION

UC/CSU/TIC's Protest

UC/CSU/TIC argues that SCE's proposal in AL 1649-E goes beyond the scope of AB1X 29 and the pertinent Commission decisions. UC/CSU/TIC interprets SCE's proposal as an expansion of the interval meter and TOU rate schedule requirement to all customers with peak demands over 200 kW, even if the customer did not receive its meter through AB1X 29. UC/CSU/TIC claims that the Legislature, the Commission or the CEC has never formally considered such an expansion. UC/CSU/TIC further argues that if the Commission wishes to

---

[3] This statement is taken from SCE's AL 1649-E. It should be noted that the actual tariffs proposed in the AL make no mention of installing any interval meters, but simply moves customers to TOU rates when they exceed 200 kW.

adopt new rates and rules for all customers with peak demand over 200 kW, it cannot do so through an advice letter filing, but must open a formal proceeding where it can consider all of the issues and hear from all affected parties.

In response to UC/CSU/TIC's protest, SCE cites AL 1577-E (approved by Energy Division on October 22, 2001) which was filed to comply with AB1X 29 and D.01-09-062. AL 1577-E modified SCE's tariffs by specifying that customers receiving State-funded meters shall be served under a TOU rate schedule. SCE notes that had funding provided by AB1X 29 been sufficient to cover the cost of interval meters for all eligible customers, modifications to its tariff as provided in AL 1577-E would not have been necessary as all eligible customers would have been required by law to have an interval meter and be on a TOU rate schedule.

SCE interprets UC/CSU/TIC's protest to assert that customers somehow understood that only a subset of eligible customers would ultimately be required to have TOU metering, presumably before the AB1X 29 funding ran out. SCE asserts its impossible for anyone to know which customers would ultimately receive a AB1X 29 funded meter, and thus all customers over 200 kW in demand would have to consider the implications of being on a TOU rate schedule.

There is no dispute that customers with demand greater than 200 kW were required to receive interval meters funded through AB1X 29, and that participation in a TOU rate schedule was mandatory as currently specified in SCE's tariffs. The dispute is whether the Commission intended the same mandatory requirements (installation of an interval meter and TOU service) for all customers above the 200 kW threshold, regardless of the funding source for the customer's interval meter.

We agree with UC/CSU/TIC that SCE's interpretation of the pertinent decisions is overly expansive and goes beyond the scope of what was authorized. In D.01-08-021, we adopted the following language:

> "Pursuant to AB1X 29, the CEC is authorized $35 million for the installation of TOU or Real Time Pricing (RTP) metering systems on all customers with electric loads over 200 kW in demand. Under this mandatory program, the CEC has chosen to install RTP rather than TOU metering systems. …. In order for California to realize the benefits of

> AB1X 29 metering expenditures, all customers who receive the meters should be on a demand reduction schedule…or placed on a TOU schedule."[4]

The above quoted text describes the installation of the meters as a "program", as opposed to a policy. Like any expenditure program, the program we authorized (mandatory installation of interval meters on certain customers) can only be implemented as far as the funding of that program allows, unless the Commission in a separate order continues the funding through some other means. There has been no such order.[5]

The Commission intended that the installation of interval meters on customers over 200 kW be limited to the funding as provided by AB1X 29. AB1X 29 was an appropriations bill that, among other things, funded several energy efficiency projects and programs. The bill's appropriation of $35 million to the CEC for interval meters is limited to a single sentence: "Thirty-five million dollars ($35,000,000) shall be used to provide time-of-use or real time meters for customers whose usage is greater than 200 kilowatt."[6] AB1X 29 did not mandate that customers beyond its funding authority must also have interval meters. We did not adopt a policy that installation of interval meters continue beyond the funding provided by AB1X 29.

SCE's proposed tariffs, if approved, move customers to TOU rates if their peak demand exceeds 200 kW for at least three months. SCE proposes to delete existing language in SCE's tariffs that tie the state-funded meters to TOU service. In essence, SCE is requesting that mandatory TOU rates should be tied to a level

---

[4] D.01-08-021, Ordering Paragraph 1.a. Subsequently, D.01-09-062 removed the requirement that AB1X 29 meter recipients must be on a demand reduction schedule, but retained the TOU schedule requirement.

[5] As discussed in the Background section of this resolution, SCE received approval (Resolution E-3746) for its RTEM Memorandum Account (RTEMMA) to account for the costs of installing the interval meters not covered by AB1X 29 funds. However Resolution E-3746 provides no authorization for SCE to use the RTEMMA as a continuing interval meter funding source after the AB1X 29 funds had been spent.

[6] AB1X 29 Chapter 5.3, Section 14 (d)(4)(B)

of peak demand, rather than receipt of a state-funded meter. SCE's proposal contrasts with what was authorized in D.01-08-021: that TOU rates are mandatory because the state must realize a benefit for the technology it has purchased. We did not adopt a policy that TOU rates are mandatory for any customer who passes the 200 kW demand threshold. We conclude that SCE's proposed tariffs create new rules for customers, and represent a clear expansion of policy beyond what the Commission had previously adopted. We do recognize that in our demand response rulemaking (R.02-06-001), our Vision Statement describes a future where customers over 200 kW will select among time-differentiated rate options that does not include flat rates, but that is not yet an adopted policy. In addition, it does not appear that all affected ratepayers have received direct notice that they may be forced to change tariffs.

Besides the fundamental issue of mandatory meters and TOU service, the Commission has also not addressed the issue of cost recovery for meters installed beyond the funding of AB1X 29. We have no record through the advice letter process to determine if ratepayers, a class of ratepayers or the customer be responsible for the costs of interval meters. The implications of mandatory meters and TOU service for future 200 kW customers, and how to best fund future interval meters, need to be explored further, and deliberated before we adopt a policy that mandates interval meters or particular rates as a default choice.

Finally we believe that there are several implementation issues that remain unresolved and subject to interpretation. For example, there is no current direction to the utilities regarding customers who drop below 200 kW but have an installed interval meter. We also note that the 200 kW demand threshold has not been explicitly defined except that it is recognized as peak demand by D.01-08-021. While SCE's advice letter proposes that the 200 kW peak demand threshold be defined as 3 months at that level in the past year, we are unable to assess that proposal without a record.

We are persuaded by UC/CSU/TIC's argument that the concept of mandatory TOU rates as proposed by SCE would be best handled in a formal proceeding where the Commission can consider all of the issues and hear from the parties who are impacted. A formal proceeding will enable us to hear from all affected stakeholders, including PG&E and SDG&E (who also received AB1X 29 funds for interval meters), and thereby provide us the opportunity to create a cohesive, consistent policy statewide regarding meter installation, cost recovery and TOU rate schedules. SCE's AL 1649-E should be rejected. SCE should seek approval of its proposed tariffs in the Commission's rulemaking on demand response (R.02-06-001). We invite PG&E and SDG&E to also address these issues in the same rulemaking. UC/CSU/TIC's protest is granted.

EMS' Protest

EMS argues that SCE's proposal requires all customers with demand above 200 kW to switch to a TOU rate option, regardless of the funding source of their interval meter. EMS points out that the Commission made TOU service mandatory for those customers receiving AB1X 29-funded meters to maximize the return of the State's investment. EMS argues that the same reasoning cannot be applied to customers who have purchased interval meters on their own, and thus such customers should not be required to be on a TOU rate option. EMS also cites the Commission's rulemaking on demand response (R.02-01-006) as in the process of developing new demand response options for customers. In light of the rulemaking, EMS argues that customers, who are required to switch to a TOU option, should also have the alternative of participating in the emerging demand response programs and tariffs.

In response to EMS' protest, SCE argues that the return on investment sought by the State is not financial, but rather the system benefits resulting from a large group of customers reacting to TOU prices. Regarding EMS' argument that customers should have the option of participating in emerging demand response programs or tariffs, SCE recommends that such programs and tariffs be put into place before that option is considered.

Given our conclusion that the Commission has not adopted a policy concerning mandatory TOU rates, EMS' suggestion to grant customers with self-funded interval meters an exemption from mandatory TOU rates is a moot point. The treatment of customers with self-funded interval meters is another facet of the policy questions we have identified that should be addressed in a formal proceeding, and thus it would be premature to accept EMS' suggestion here. We thus reject this portion of EMS' protest.

EMS' protest also suggests that the recently authorized demand response be another option for customers with interval meters. This has in fact already occurred. Customers with interval meters may voluntarily sign up for the demand programs we adopted in D.03-06-032, assuming they meet all the other eligibility requirements.[7]

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission.

Energy Division requests that the 30-day comment period for the draft of this alternate resolution be reduced to 16 days.

Comments were filed by SCE on September 23, 2003. Reply comments were filed by the California Consumer Empowerment Alliance (CCEA) on September 25, 2003. TURN also filed reply comments on September 29, 2003, which were not considered as they were filed after the reply comment deadline.

SCE is not opposed to further exploring the issue of mandatory TOU rates for large customers in Phase 2 of R.02-06-001. However, SCE also contends that it was authorized to track incremental metering costs after AB1X 29 funding was depleted. SCE specifically disputes the Alternate Draft Resolution's statement that the RTEMMA was not meant to be a continuing interval meter funding source after AB1X 29 funds had been spent. SCE cites tariff language adopted by Resolution E-3746 that authorizes SCE to track incremental costs associated with RTEM equipment to the extent such costs exceed funding provided by the CEC.

CCEA's reply comments support SCE's comments.

No party is opposed to using R.02-06-001 to explore and determine a policy concerning mandatory TOU rates for large customers. However both SCE and

[7] EMS' protest presumes that TOU rates are mandatory, and that the demand response programs are additional options for customers to consider. As noted previously in the resolution, the issue of mandatory TOU rates has not been decided, and the availability of demand response alternatives is not a prejudgment of that issue in anyway.

CCEA dispute the resolution's findings (#11, #12 and #15) that the Commission did not adopt a policy that the installation of interval meters on large customers continue beyond the funding provided by AB1X 29.

We decline to modify Findings #11, #12, and #15 as suggested by SCE, as we think it is important to clarify at this time the policies we had intended in our past decisions concerning interval meters and TOU participation. However, our decision not to modify these findings should not be interpreted as a prejudgment concerning SCE's use of its memorandum account, or the installation of interval meters beyond its initial estimate of 12,000 accounts.

We also clarify at this time that SCE should cease any further installations of interval meters until the Commission resolves the meter installation issue in the demand response rulemaking, and that those customers who have received meters not funded through AB1X 29 (the approximate 700 accounts according to SCE) should not be subject to mandatory TOU rates, until this issue is resolved in the demand response rulemaking.

FINDINGS

1. AB1X 29 allocated $35 million from the state General Fund for the California Energy Commission (CEC) to provide either time-of-use (TOU) or real-time interval meters to customers with demands greater than 200 kW.

2. D.01-08-021 found that the receipt of TOU or RTP meters for customers with electric loads over 200 kW of peak demand is mandatory under AB1X 29.

3. D.01-08-021 also found that the CEC has chosen to use the $35 million allocated by the Legislature under AB1X 29 to install RTP metering systems for customers.

4. D.01-09-062 found that customers receiving RTP meters under AB1X 29 who are not on a TOU schedule should be placed on a TOU schedule.

5. Through AL 1549-E-A (approved by the Commission through Resolution E-3746), SCE established the Real Time Energy Meter (RTEM) Memorandum Account for the purpose of recovering costs associated with the AB1X 29 – funded 12,000 meters that are in excess of funds provided by AB1X 29.

6. Based on its interpretation of D.01-08-021 and D.01-09-062, SCE has continued to install interval meters beyond the 12,000-customer target funded by AB1X 29. These are either new customers requesting service in SCE territory (and are greater than 200 kW), or existing customers whose growth in energy demand has taken them above the 200 kW threshold.

7. SCE filed AL 1649-E for the purpose of requiring that all customers with peak demands exceeding 200 kW should be required to take service on a TOU rate schedule.

8. SCE states that its tariffs currently require only those customers that have received an AB1X 29-funded meter to take service on a TOU rate schedule. The tariffs do not require customers who receive a ratepayer-funded interval meter or other type of interval meter to take service on a TOU rate schedule

9. Grueneich Resource Advocates (Grueneich) and Energy Management Systems (EMS) timely protested AL 1649-E on September 26, 2002. Grueneich protested on behalf of the University of California, California State University and The Irvine Company (UC/CSU/TIC).

10. There is no dispute that customers with demand greater than 200 kW were required to receive interval meters funded through AB1X 29, and that participation in a TOU rate schedule was mandatory as currently specified in SCE's tariffs.

11. The Commission intended that the installation of interval meters on customers over 200 kW be limited to the funding as provided by AB1X 29.

12. The Commission did not adopt a policy that installation of interval meters continue beyond the funding provided by AB1X 29.

13. SCE's proposed tariffs, if approved, move customers to TOU rates if their peak demand exceeds 200 kW for at least three months.

14. SCE's proposal contrasts with what was authorized in D.01-08-021: that TOU rates are mandatory because the state must realize a benefit for the technology it has purchased.

15. SCE's proposed tariffs create new rules for customers, and represent a clear expansion of policy beyond what the Commission had previously adopted.

16. The Vision Statement in the demand response rulemaking (R.02-06-001) describes a future where customers over 200 kW will select among time-differentiated rate options that does not include flat rates, but that is not yet an adopted policy.

17. The Commission has also not addressed the issue of cost recovery for meters installed beyond the funding of AB1X 29.

18. The concept of mandatory TOU rates as proposed by SCE would be best handled in a formal proceeding where the Commission can consider all of the issues hear from the parties who are impacted, and create a cohesive, consistent policy statewide.

19. SCE's AL 1649-E should be rejected.

20. SCE should seek approval of its proposed tariffs in the Commission's rulemaking on demand response (R.02-06-001).

21. UC/CSU/TIC's protest is granted.

22. The treatment of customers with self-funded interval meters is another facet of the policy questions that should be addressed in a formal proceeding.

23. EMS' protest is partially rejected.

24. Customers with interval meters may voluntarily sign up for the demand programs we adopted in D.03-06-032, assuming they meet all the other eligibility requirements.

THEREFORE IT IS ORDERED THAT:

1. Advice Letter 1649-E is rejected.

2. The protest filed by UC / CSU / TIC is granted.

3. The protest filed by EMS is denied in part.

4. SCE shall seek to resolve its proposed tariff language in the demand response rulemaking, R.02-06-001.

5. SCE shall cease installation of interval meters on customers above 200 kW in demand until the Commission resolves this issue in R.02-06-001.

6. SCE shall inform the 700 customers (who have received non-AB1X 29 interval meters) that TOU rates are currently not mandatory, and that the Commission will resolve the issue of mandatory TOU rates in R.02-06-001.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on October 16, 2003; the following Commissioners voting favorably thereon:

WILLIAM AHERN
Executive Director

CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
Commissioners

I dissent.
/s/ MICHAEL R. PEEVEY
President

I dissent.
/s/ SUSAN P. KENNEDY
Commissioner